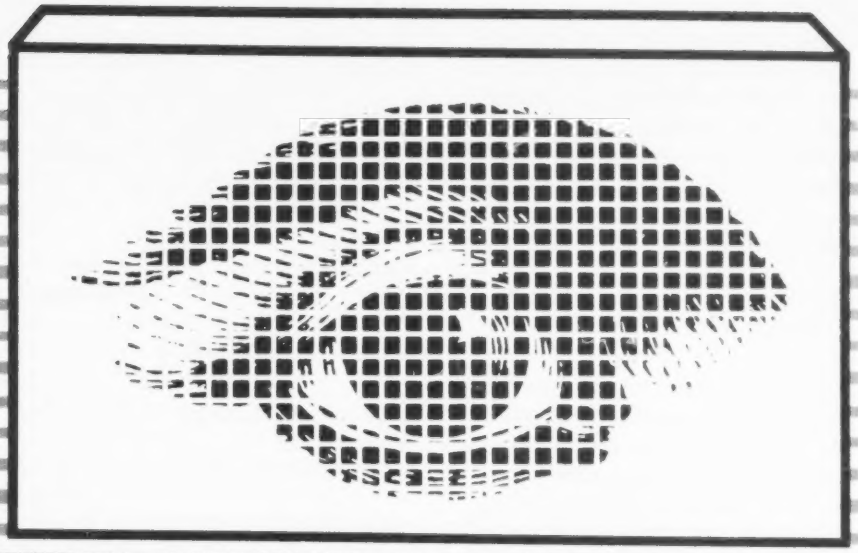
40/989

Circular 40

Copyright Registration for Works of the Visual Arts



LC 3.4/2:

READEX FICHE best copy available

Copyright Registration for Works of the Visual Arts

GENERAL INFORMATION

Copyright is a form of protection provided by the laws of the United States to the authors of "original works of authorship," including "pictorial, graphic, and sculptural works." The owner of copyright in a work has the exclusive right to make copies, to prepare derivative works, to sell or distribute copies, and to display the work publicly. Anyone else wishing to use the work in these ways must have the permission of the author or someone who has derived rights through the author.

How Copyright is Secured

The Copyright Office registers claims to copyright and issues certificates of registration, but does not "grant" or "issue" copyrights. Under the law, copyright protection begins automatically when a work is first created in the form of a material object from which it can be perceived, reproduced, or otherwise communicated. For unpublished works and works published on or after January 1, 1978, registration is not a condition of protection and is ordinarily not required.

Advantages of Registration

There are, however, certain advantages to registration, including the establishment of a public record of the copyright claim. Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin and for foreign works not originating in a Berne Union country. (For more information on when a work is of U.S. origin, request Circular 93.) Timely registration may also provide a broader range of remedies in an infringement suit. Request Circular 1, "Copyright Basics," for more information on the benefits of registration.

WORKS OF THE VISUAL ARTS

Copyright protects original "pictorial, graphic, and sculptural works," which include two-dimensional and three-dimensional works of fine, graphic, and applied art. The following is a list of examples of such works:

Advertisements, commercial prints, labels

Artificial flowers and plants, floral arrangements

Artwork applied to clothing or other useful articles

Bumper stickers, decals, stickers

Cartoons, comic strips

Collages

Dolls, toys

Drawings, paintings, murals

Enamel works

Fabric, floor and wallcovering designs

Games, puzzles

Greeting cards, postcards, stationery

Holograms, computer and laser artwork

Jewelry designs

Logo artwork

Maps: cartographic works, globes, relief models

Masks

Models

Mosaics

Needlework and craft kits

Original prints: engravings, etchings, serigraphs, silk screen prints, woodblock prints

Patterns for sewing, knitting, crochet, needlework

Photographs, photomontages

Posters

Record jacket artwork or photography

Relief and intaglio prints

Reproductions: lithographs, collotypes

Sculpture: carvings, ceramics, figurines, maquettes, molds, relief sculptures

Stained glass designs

Stencils, cut-outs

Technical drawings, architectural drawings or plans, blueprints, diagrams, mechanical drawings

Weaving designs, lace designs, tapestries

Copyright protection for an original work of authorship does not extend to the following:

- Ideas, concepts, discoveries, principles;
- Formulas, processes, systems, methods, procedures;
- Words and short phrases such as names, titles, and slogans;
- Familiar symbols or designs;
- Mere variations of typographic ornamentation, lettering or coloring.

USEFUL ARTICLES

A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. Examples are clothing, furniture, machinery, dinnerware, and lighting fixtures. An article that is normally part of a useful article may itself be a useful article; for example, an ornamental wheel cover on an automobile.

Copyright does not protect the mechanical or utilitarian aspects of such works of craftsman. It may, however, protect any pictorial, graphic, or sculptural authorship that can be identified separately from the utilitarian aspects of an object. Thus, a useful article may have both copyrightable and uncopyrightable features. For example, a carving on the back of a chair or a floral relief design on silver flatware could be protected by copyright, but the design of the chair or flatware itself could not. Some designs of useful articles may qualify for protection under the Federal patent law. For further information, write to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Copyright in a work that portrays a useful article extends only to the artistic expression of the author of the pictorial, graphic, or sculptural work. It does not extend to the design of the article that is portrayed. For example, a drawing or photograph of an automobile or a dress design may be copyrighted, but that does not give the artist or photographer the exclusive right to make automobiles or dresses of the same design.

PUBLICATION

The copyright law defines "publication" as: the distribution of copies of a work to the public by sale or other transfer of ownership or by rental, lease, or lending. Offering to distribute copies to a group of persons for purposes of further distribution or public display also constitutes publication. A public display does not of itself constitute publication.

A work of art that exists in only one copy, such as a painting or statue, is not regarded as published when the single existing copy is sold or offered for sale in the traditional way—for example, through an art dealer, gallery, or auction house.

When the work is reproduced in multiple copies (such as reproductions of a painting or castings of a statue), the work is published when copies of the reproductions are publicly distributed or offered to a group for further distribution or public display.

Publication is an important concept in copyright, because, among other reasons, whether a work is published or not may affect the number of copies and the type of material that must be deposited when registering a work. In addition, all works published in the United States become subject to mandatory deposit in the Library of Congress. These requirements are explained elsewhere in this circular.

NOTICE OF COPYRIGHT

When a copyrighted work is published under authority of the copyright owner, it may bear a notice of copyright to identify the year of publication and the name of the copyright owner and to inform the public that the work is protected by copyright. Works published before March 1, 1989, ***must*** bear the notice or risk loss of copyright protection. The copyright owner is responsible for affixing the copyright notice to copies to be published. Advance permission from, or registration with, the Copyright Office is not required.

Form of Notice

A proper copyright notice for works of the visual arts consists of the following three elements:

1. *The symbol* © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.";

2. *The year of first publication* of the work; and

3. *The name of the copyright owner*, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

Example: © 1989 Joan Jones

The year may be omitted where a pictorial, graphic, or sculptural work, with accompanying text, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful article. In the case of a compilation or derivative work incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient.

The notice should be permanently attached to the copies, legible to the ordinary user, and placed in such manner and location that it gives reasonable notice of the claim to copyright. It must not be concealed from view upon reasonable examination.

For specific examples of methods of affixing the notice to various kinds of works—as well as additional information on omission of the notice and correcting errors in the notice—request Circular 3, "Copyright Notice."

REGISTRATION PROCEDURES

Works of the visual arts may be registered in published or unpublished form. Registration may be made at any time during the life of the copyright. To register a copyright claim in a work of the visual arts, send the following material for each claim **in the same envelope or package** to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559:

1. A properly completed application Form VA;

2. A nonreturnable deposit of the work to be registered; and

3. A nonrefundable filing fee of $10 in the form of a check or money order, payable to the **Register of Copyrights**. Do not send cash.

Application Form

Form VA is the appropriate form for registration of a work of the visual arts. The form should be completed legibly with black ink or typewriter. Do not use pencil or send a carbon

copy. All pertinent information should be given on the basic application form. A continuation sheet supplied by the Copyright Office should be used only when all necessary information cannot be recorded on the basic form. No other attachments will be accepted. (For information on ordering application forms and circulars, see "For More Information," on page 6 of this circular.)

DEPOSIT REQUIREMENTS

Circular 40a, "Deposit Requirements for Registration of Claims to Copyright in Visual Arts Material," provides a basic guide about what material should be deposited when registering a claim and defines basic terms such as "complete copy," "best edition," and "identifying material." The following is a general outline of the deposit requirements.

For Two-Dimensional Works:

If unpublished, one complete copy of identifying material.

If first published in the United States on or after January 1, 1978, generally two complete copies of the best edition.

If first published in the United States **before** January 1, 1978, two complete copies of the best edition as first published. Where identifying material is permitted or required, the identifying material must represent the work as first published.

If first published outside the United States, whenever published, one complete copy as first published. Where identifying material is permitted or required, the identifying material must represent the work as first published.

For Three-Dimensional Works and Two-Dimensional Works Applied to Three-Dimensional Objects:

For published and unpublished works, identifying material such as photographs or drawings.

Special Provisions

For some works first published in the United States, only one copy is required instead of two. These include:

- Greeting cards, picture postcards, stationery, business cards;
- Games;
- Pictorial matter or text on a box or container (where the contents of the container are not claimed);
- Contributions to collective works (the deposit may be either

one complete copy of the best edition of the entire collective work, the complete section containing the contribution, the contribution cut from the collective work in which it appeared, or a photocopy of the contribution itself as it was published in the collective work).

For some works, identifying material is permitted, not required. For example, either identifying material or actual copies may be deposited for some unpublished works and for limited editions of posters or prints (with certain qualifying conditions).

For all works that exceed 96 inches in any dimension, identifying material is required.

For additional information on what is permitted or required for registration of certain kinds of visual arts works, request Circular 40a and Circular 96, Sections 202.19, 20, and 21, "Deposit Regulations of the Copyright Office."

REGISTRATION FOR TWO OR MORE WORKS WITH ONE APPLICATION AND FEE

Two or more individual works may be registered with one application and fee as follows:

Unpublished Works

A group of unpublished works may be registered as a collection if all of the following conditions are met:

- The elements of the collection are assembled in an orderly form;
- The combined elements bear a single title identifying the collection as a whole;
- The copyright claimant or claimants for each element in the collection are the same; and
- All of the elements are by the same author, or if they are by different authors, at least one author has contributed copyrightable authorship to each element.

NOTE: Works registered as an unpublished collection will be listed in the records of the Copyright Office only under the collection title.

Published Works

All copyrightable elements that are included in a single unit of publication, and in which the copyright claimant is the same, may be considered a single work for registration purposes. An example is a game consisting of playing pieces, a game board, and game instructions.

Group Registration of Contributions to Periodicals

A single registration may be made for a group of contributions to periodicals if all of the following conditions are met:

- All of the works have the same copyright claimant;
- All of the works are by the same author;
- The author of each work is an individual, and not an employer or other person for whom the work was made for hire;
- Each work was first published as a contribution to a periodical (including newspapers) within a 12-month period;
- The entire periodical issue or entire section of the newspaper in which the work was first published is deposited;
- The application must identify each contribution separately, including the periodical containing it and the date of its first publication.

For contributions that were first published before March 1, 1989, in addition to the above conditions, each contribution as first published must have borne a separate copyright notice, and the name of the owner of copyright in the work (or an abbreviation or alternative designation of the owner) must have been the same in each notice.

Such contributions are registered on Form VA accompanied by Form GR/CP (group registration of contributions to periodicals). Examples of works eligible for such a group registration include cartoon strips, newspaper columns, horoscopes, photographs, drawings, and illustrations.

No Blanket Protection

Registration covers only the particular work deposited for the registration. It does not give any sort of "blanket" protection to other works in the same series. For example, registration of a single cartoon or comic strip drawing does not cover any earlier or later drawings. Each copyrightable version or issue must be registered to gain the advantages of registration for the new material it contains. However, under the conditions described above under **"Published Works"** and **"Group Registration of Contributions to Periodicals,"** certain group registrations may be made with one application and fee.

MANDATORY DEPOSIT FOR WORKS PUBLISHED IN THE UNITED STATES

Whether or not copyright registration is sought, the copyright law contains a mandatory deposit requirement for works published in the United States. The owner of copyright, or the owner of the exclusive right of publication in the work, is required to deposit two complete copies of the best edition for the use of the Library of Congress within 3 months of publication in the United States. Failure to deposit does not affect copyright protection, but it can result in fines and other penalties.

Some categories of pictorial, graphic, and sculptural works are exempt from this requirement, and the obligation is reduced for other categories. The following works are **exempt** from the mandatory deposit requirement:

- Scientific and technical drawings and models;
- Greeting cards, picture postcards, and stationery;
- Three-dimensional sculptural works (but not including globes, relief models, and similar cartographic works);
- Works published only as reproduced in or on jewelry, toys, games, textiles, packaging material, and any useful article;
- Advertising material published in connection with articles of merchandise, works of authorship, or services;
- Works first published as individual contributions to collective works (but not the collective work as a whole);
- Works first published outside the United States and later published without change in the United States, under certain conditions. (See Circular 96, Sections 202.19, 20, and 21.)

Copies deposited for the Library of Congress under the mandatory deposit provision may also be used to register the claim to copyright, but only if they are accompanied by the prescribed application and fee for registration. For further information about mandatory deposit, request Circular 7d, "Mandatory Deposit of Copies or Phonorecords for the Library of Congress."

EFFECTIVE DATE OF REGISTRATION

A copyright registration is **effective on the date the Copyright Office has received all of the required elements in acceptable form**, regardless of how long it takes thereafter to process the application and mail the certificate of registration. The time required to process an application varies, depending on the amount of material received and the personnel available to handle it.

If you are filing an application for copyright registration in the Copyright Office, you will **not** receive an acknowledgement that your application has been received, but you can expect within 120 days:

- A letter or telephone call from a copyright examiner if more information is needed;
- A certificate of registration to indicate that the work has been registered; or, if the copyright claim cannot be registered, a letter explaining why registration is refused.

If you want to know when the Copyright Office receives your material,you should send it by registered or certified mail and request a return receipt from the Postal Service. Allow at least 3 weeks for the return of your receipt.

FOR MORE INFORMATION

To request applications, circulars, and other publications, call the Forms and Publications Hotline, (202) 707-9100, and leave a recorded message, or write:

Copyright Office
Publications Section, LM-455
Library of Congress
Washington, D.C. 20559

To speak with an information specialist or to request further information, call (202) 479-0700, or write:

Copyright Office
Information Section, LM-455
Library of Congress
Washington, D.C. 20559

Copyright Office • Library of Congress • Washington, D.C. 20559

■June 1989—40,000

☆U.S. GOVERNMENT PRINTING OFFICE: 1989—241-429:00001